

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty, as alleged.

## **FACTUAL HISTORY**

On June 27, 2018 appellant, then a 40-year-old lead contact representative, filed an occupational disease claim (Form CA-2) alleging that she experienced anxiety attacks due to factors of her federal employment, including her work environment dealing with the public and her relationship with management. She reported that her job required her to service the public by performing a high volume of work at the front window, answering a steady stream of incoming telephone calls, processing mail/work listings, and utilizing multiple employing establishment programs, policies, and procedures. Appellant asserted that, after the management in her local office changed at the end of 2016, the new management subjected her to harassment, discrimination, and retaliation, and her stress level increased drastically. She noted, "I went from an average manageable work environment to a hostile work environment." Appellant noted that she first became aware of her claimed condition on March 8, 2017 and first realized its relation to her federal employment on August 17, 2017. She did not stop work.

In a July 9, 2018 statement, appellant alleged that, after her local office management team changed in approximately November 2016, her work environment changed from being normal to being "completely hostile and intolerable." She asserted that she contacted employing establishment officials about the problem, but it remained unresolved. Appellant advised that she had been promoted to lead customer service representative in October 2016 and had been able to "manage the daily stresses" of performing her job duties and carried out her job with "upmost success." She claimed that the new management team embarrassed her in front of coworkers and the public, gave her duplicate work assignments, and wrongly denied her career advancement opportunities. Appellant recounted that, in approximately August 2017, she realized that management did not appreciate her hard work and dedication to her job, and that, in approximately October 2017, D.M., her immediate supervisor, retaliated against her for filing an Equal Employment Opportunity (EEO) claim by "manipulating" her performance review.

Appellant submitted medical reports, dated March 9, 2017 to July 6, 2018, in which Dr. Kimberly Kaye, a Board-certified internist, excused her from work for various periods. In her July 6, 2018 report, Dr. Kaye noted that appellant, who had been diagnosed with anxiety, reported working in a hostile and discriminatory environment.

In a July 24, 2018 development letter, OWCP advised appellant of the type of evidence necessary to establish a claim and attached a questionnaire for her completion. By separate development letter of even date, it requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant's allegations. OWCP afforded both parties 30 days to respond.

On August 6, 2018 OWCP received a timeline-style document in which appellant indicated that D.M. was appointed in November 2016 and that she found her to be rude, abrupt, intimidating, and unapproachable. Appellant claimed that in December 2016, D.M., unfairly criticized her when

she submitted a form to gain authorization to operate a private transportation business<sup>3</sup> and that she used a “rude, harsh, and abrupt tone” to wrongly accuse her of misplacing a form that a claimant had filed to appeal an agency decision. Appellant alleged that on approximately January 20, 2017 D.M. told her in a harsh tone that she could promote whomever she wished regardless of work ethic and job performance as the lead customer service representative. D.M. also spoke to her in a harsh manner regarding her responsibility for all training and development in her work unit. Appellant claimed that, in March 2017, D.M. and another supervisor isolated her from the rest of her work unit by first announcing an upcoming meeting to other service representatives and that D.M. showed no remorse for her actions. She alleged that on approximately April 10, 2017 D.M. spoke loudly in a harsh tone in the middle of the office and questioned her as to whether she was going to work on her private business while she was at home on sick leave. Appellant indicated that later in April 2017 she expressed her concerns regarding the work environment to D.M. and another supervisor, but they did not address her concerns. She believed that D.M. had punitive intent when she indicated that she would determine her days off work.

Appellant claimed that on approximately April 26, 2017 D.M. gave her a performance evaluation and told her in a condescending tone that she needed to show more initiative. She indicated that, in early-May 2017, D.M. unnecessarily embarrassed her in front of coworkers about a minor error, and also rudely banged on her computer and told her to “check her mail” for no apparent reason. Appellant alleged that she later had a contentious conversation with D.M. regarding being chastised in front of coworkers. She claimed that on May 5, 2017 D.M. improperly directed her to redo a work assignment about a matter with a customer that had already been resolved. Appellant asserted that in July 2017 D.M. unreasonably scrutinized how long she took for her lunch break and wrongly criticized her for several e-mails she sent regarding her mentoring of a trainee. She alleged that, between August and December 2017, D.M. improperly instructed her to use personal leave to address an EEO matter, which she believed to be work related.

In an August 6, 2018 statement, appellant described her work schedule and noted that she had been able to manage the stresses of her job as a customer service representative prior to the November 2016 change in the management team of her local office. She again asserted that she did not develop an emotional condition until 2017 when the new management team subjected her to discrimination and mistreatment. Appellant later submitted additional medical evidence and several administrative documents, including forms relating to her request for approval of activity outside the workplace and an August 27, 2018 EEO decision finding that the employing establishment had not discriminated against her.

In an August 23, 2018 letter, D.M. responded to a number of the claims made by appellant. She expressed her belief that appellant’s anxiety was related to her unrealistic expectations and multiple family-related matters.

By decision dated November 19, 2018, OWCP denied appellant’s emotional condition claim because she failed to establish a compensable employment factor. In the factual portion of

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<sup>3</sup> Appellant claimed that D.M. later mishandled the processing of the form and continued to reference her business plans in a rude and discriminatory manner.

the decision, it detailed the statements contained in appellant's June 27, 2018 Form CA-2. In the analysis section of the decision, OWCP described appellant's allegations in a single sentence, by noting, "You alleged the following incident(s): Mistreatment and discrimination from management, hostile work environment, and retaliation."

On December 26, 2018 appellant requested reconsideration of the November 19, 2018 decision. She submitted another timeline-style statement in which she provided further details regarding her claimed employment factors. Appellant submitted additional medical evidence and administrative documents and e-mails regarding such matters as leave usage, reasonable accommodation for medical conditions, and performance ratings.

By decision dated March 26, 2019, OWCP denied modification of its November 19, 2018 decision.

On November 19, 2019 appellant requested reconsideration of the March 26, 2019 decision. In an October 23, 2019 statement, she asserted that D.M. presented false information that led to her claim being denied. Appellant submitted additional medical evidence.

By decision dated February 24, 2020, OWCP denied modification of its March 26, 2019 decision.

On June 24, 2020 appellant requested reconsideration of the February 24, 2020 decision. She submitted statements from three employing establishment employees who described their own problems with D.M. Appellant also submitted numerous documents from an EEO complaint and a lawsuit she filed in U.S. District Court.

By decision dated September 25, 2020, OWCP denied modification of its February 24, 2020 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or

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<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> A.J., Docket No. 18-1116 (issued January 23, 2019); Gary J. Watling, 52 ECAB 278 (2001).

<sup>6</sup> 20 C.F.R. § 10.115(e); M.K., Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.<sup>7</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.<sup>8</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.<sup>9</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

The Board finds that OWCP did not provide adequate facts and findings in support of its denial of appellant's emotional condition claim. OWCP denied appellant's claim in its September 25, 2020 decision, but provided little additional discussion of appellant's claimed employment factors.

In deciding matters pertaining to a given claimant's entitlement to compensation benefits, OWCP is required by statute and regulation to make findings of fact.<sup>10</sup> The Federal (FECA) Procedure Manual further specifies that a final decision of OWCP "should be clear and detailed so that the reader understands the reason for the disallowance of the benefit and the evidence necessary to overcome the defect of the claim."<sup>11</sup> These requirements are supported by Board precedent.<sup>12</sup>

Given the inadequacy of OWCP's presentation of the facts and findings in the present case, appellant would be unable to understand the reason for the disallowance of her claim and the

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<sup>7</sup> See *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>8</sup> See *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>9</sup> *Id.*

<sup>10</sup> 5 U.S.C. § 8124(a) provides that OWCP "shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP "shall contain findings of fact and a statement of reasons."

<sup>11</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5c(3)(e) (February 2013).

<sup>12</sup> See *P.G.*, Docket No. 17-1461 (issued February 7, 2019); *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

evidence necessary to overcome the defect of her claim. Therefore, the case shall be remanded to OWCP for further evaluation and a *de novo* decision, which contains adequate facts and findings regarding appellant's emotional condition claim.<sup>13</sup>

**CONCLUSION**

The Board finds that this case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 25, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 30, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>13</sup> See *id.* See also *supra* note 8.